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November 30, 2022

Honorable Loma G. Schofield  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007  
\* ViaECF \*

Re: *Borgen v. Elezzi, et al.*; Case No. 22-cv-4105 (LGS)

Dear Judge Schofield:

I represent the Plaintiff, Joseph Borgen, in the above-referenced case. I am writing to the Court today for three reasons. First I want to provide the Court with a status report to follow up on my letter of August 16, 2022 [ECF# 18]. Secondly, in conjunction with this status report, I wanted to address the Court's Memo Endorsement of August 25, 2022 [ECF# 24], to the extent that it refers to a date (December 7, 2022) for the initial conference and the joint letter and proposed case management plan in advance of the same. Third, I write to ask the Court respectfully, for a second extension of time, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, of the date by which the minor defendant, "K.A." may be served with the Summons and Complaint in this action, for the reasons set out below.

## 1. Status Report

As previously noted trying to obtain addresses for the defendants in this case for purposes of effecting service of process proved to be very difficult. Eventually, four of the Defendants were served when they appeared for court appearances in the state criminal hate crime prosecutions against them arising out the incident that is the basis for this lawsuit. Defendants Elezzi, Awawdeh, Musa, and Othman have now all been served. [ECF## 14, 15, 16, 26].

On August 18, 2022, Defendant Elezzi filed an Answer and a motion to stay all proceedings in this case during the pendency of the state hate crime prosecution. [ECF## 20, 21]. On August 25, 2022, the Court granted Defendant Elezzi's motion to stay all proceedings, while expressly noting that the case would proceed as to the other Defendants. [ECF# 24].

Defendants Awawdeh, Musa, and Othman never filed any pleading in response to the Summons and Complaint served on them; accordingly, Mr. Borgen has moved for the entry of a

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default against each of them. [ECF## 27, 28, 29]<sup>1</sup> That leaves only the minor Defendant, “K.A.” who has not been served and that is because, notwithstanding all diligent efforts, I still have not succeeded in confirming “K.A.”’s name and address. The district attorney will not provide any relevant information, notwithstanding Mr. Borgen’s status as the victim. Clearly, at some point that office will have to provide some information, since Mr. Borgen will be a primary witness and will have to know when and where to appear. It should be possible to serve “K.A.” at that time, if his identity and address are not ascertained before then.

## **2. The Initial Conference, Joint Letter, and Proposed Case Management Plan.**

The Court’s August 25, 2022, Order also adjourned the initial conference from September 7, 2022 to December 7, 2022. [ECF# 24]. The Court further directed that a joint letter and proposed case management plan should be filed on November 30, 2022, in advance of the December 7, 2022 initial conference. [*Id.*] Based on that latter directive I felt that it would be appropriate to write to explain why no joint letter and proposed case management plan can be filed and to suggest that the December 7, 2022 initial conference date be formally adjourned.

The only Defendant who has filed a responsive pleading is Defendant Elezzi and all proceedings are stayed as to him. A motion for entry of default is pending as to each of the other Defendants who have been served, and the minor Defendant has not yet been served. There is no party Defendant, therefore, with whom a joint letter or proposed case management plan could be coordinated. It is not possible to prepare one with Defendant Elezzi, since there is no way to know yet when the stay would be lifted, as it is dependent on the resolution of the criminal hate crime case. Accordingly, Mr. Borgen respectfully suggests that the initial conference (and corresponding obligations to prepare the joint letter and proposed case management plan), provided for in the August 25, 2022 Order [ECF# 24] be adjourned until further notice.

## **3. Extending the Date by Which the Minor Defendant, “K.A.” is to be Served.**

As noted previously, Rule 4(m), of the Federal Rules of Civil Procedure requires service of the summons and complaint within 90 days of the filing of the action. It expressly authorizes the Court to extend the period. Mr. Borgen has tried all reasonable means to find a way to confirm the minor Defendant “K.A.”’s identity and address, to no avail. As mentioned above, while the New York District Attorney has refused to provide identifying information and scheduling information for proceedings in “K.A.”’s criminal case is not presently available, Mr.

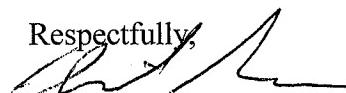
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<sup>1</sup> On October 6, 2022, Defendant Musa filed a notice of *pro se* appearance in the case [ECF# 25]; but has failed to file any responsive pleading to the Complaint. Defendants Awawdeh and Othman never filed anything.

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Borgen, as the victim, will eventually have to be informed as to the time and place of an appearance in the criminal case so that he can testify and, if continuing efforts to identify "K.A." are not successful before then, "K.A." can and will be served at that appearance.

Mr. Borgen respectfully submits that good cause for extending the service period has been established here through the due diligence he has applied at all times toward trying to confirm "K.A."s identity and address, through a well respected, experienced professional investigator and extensive additional efforts. [See ECF# 12]. Accordingly, Mr. Borgen respectfully asks Your Honor to extend the service period for a second time for an additional 90 days, from November 15, 2022 to February 15, 2023 or for whatever period of time Your Honor deems reasonable and appropriate under the circumstances.

Respectfully,  
  
David I. Schoen  
Counsel for the Plaintiff

cc: Counsel of Record via ECF;  
*Pro se* Defendant Musa by mail

Application GRANTED. The initial pretrial conference is ADJOURNED, *sine die*. The proceedings against Defendants Awawdeh, Musa, Othman and K.A. are STAYED, pending resolution of the criminal indictments against them in New York Court's Supreme Court. Notwithstanding the stay of proceedings with respect to K.A., Plaintiff shall continue his efforts to serve K.A. and shall file proof of service on the docket if he is able to do so. Plaintiff shall include a copy of this Order when serving K.A.

Within fourteen (14) days of a resolution of any of the criminal indictments against the five Defendants, Plaintiff shall file a letter with the Court apprising it of the resolution and proposing next steps in this litigation with regards to that Defendant. Such a letter shall also contain a statement of the status of criminal proceedings against any other Defendants, to the extent Plaintiff is aware of it.

Plaintiff's motions for default judgments against Awawdeh, Musa and Othman are DENIED, without prejudice to renewal. So Ordered.

The Clerk of Court is respectfully directed to close the motions at Dkts. 27, 28 and 29.

Dated: December 5, 2022  
New York, New York

  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE